



# Conservation Law Foundation

July 25, 2005

Howard Bernstein, Ph.D  
RPS Program Manager  
Massachusetts Division of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**Re: Notice of Inquiry/Proposed Revisions to Biomass Regulations**

Dear Mr. Bernstein:

The Conservation Law Foundation appreciates this opportunity to comment on prospective changes to the Division of Energy Resources' (Division's) Renewable Portfolio Standard (RPS) biomass regulations as contemplated in the July 1, 2005 Notice of Inquiry. We applaud the Division's efforts to move away from the current system of case-by-case consideration of RPS eligibility for biomass facilities in favor of implementing clear standards that would provide greater certainty and consistency. However, such streamlining of the process must not come at the cost of weakening the RPS.

Moving beyond our agreement on this fundamental concept, we are concerned that some of the specific ideas and proposals set forth in the Notice of Inquiry (NOI) would, if promulgated as new regulations, not just codify past decisions but rather would substantively change the rules, undermining the integrity of the RPS, the renewable energy certificate marketplace and real business decisions made by "first movers" in the renewable energy industry. As Commissioner David O'Connor himself has recently reaffirmed, stable RPS rules are important because, inter alia, they encourage investor confidence that is critical to bringing new clean renewables online. See Commissioner O'Connor's PowerPoint Presentation on "Portfolio Standards and the Supply of Renewable Energy in New England" from the April 29, 2005 Electricity Restructuring Roundtable. A reliable and robust RPS program demands predictability. Substantively changing the rules midstream should be avoided unless necessary to resolve a critical flaw in the program, and there is no reason to fundamentally alter the rules here.

Moreover, at least one significant proposal advanced in the NOI – allowing pre-1997 biomass facilities to qualify as RPS-eligible facilities for a period of 3 years after retooling – would undermine core aspects of the RPS, including the important goals of bringing *new* renewable energy facilities online and expanding

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the diversity of our energy supply. Indeed, treating old facilities as new (absent some sort of total re-powering that completely transforms the facility) is legally indefensible given the plain language of the statute. Though we support efficiency and emissions-control advances for old biomass facilities, we are opposed to any such retrenchment in the RPS program for the reasons articulated below. These comments also address the suggested low-emission criteria, both generally and in connection with emissions from combustion of C&D wood.

**Pre-1997 biomass facilities should not be considered RPS-eligible unless a secondary RPS tier is established to encompass re-powered old biomass.**

Although encouraging old biomass facilities to become more efficient and cleaner are laudable objectives, we believe that it would be contrary to the letter and intent of the RPS statute to allow an existing biomass generation facility to count as “new” by virtue of upgrading its power conversion technology and pollution controls. The RPS statute, set forth at M.G.L. c. 25A, s.11F, requires retail electricity suppliers to purchase a minimum percentage of kilowatt-hour sales from “*new* renewable energy generating sources” (emphasis added), and defines such a new renewable energy generating source as “one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility.” The clear intent of the statute is to increase the availability of renewable energy generation, with intended benefits including fuel diversity, price stability, environmental and economic development benefits.

The statute notably contemplates the idea of retrofitting previously operational biomass facilities, and establishes that such a retrofitted facility may be considered a “renewable energy generating source.” Here, the law notably distinguishes between “new” renewable generating facilities – which must be relied upon for the requisite minimum percentage of kilowatt-hours sales to end-use customers – and those that are retrofit and not considered “new.”

The Division’s proposal to limit retooled older biomass facilities to three years of RPS eligibility implicitly recognizes that they are not the new renewable energy generating sources that the statute contemplates, and indeed we believe there is no authority under the statute for discriminating among eligible generating sources in this way. Under the existing statutory and regulatory scheme, either a generating source is a new renewable generating source and entitled to RPS eligibility equivalent to other qualified sources, or it is not a new renewable generating source at all.<sup>1</sup> In this case, any retrofitted pre-1997 biomass facility simply is not eligible under the RPS statute as a new renewable generating source.

In order to encourage retrofits of pre-1997 biomass facilities with more efficient power conversion technologies and emissions control technology that meets the “low emissions” standard, we suggest that the Division consider creating a separate tier of RPS-eligible facilities. If such a separate RPS tier is created, the Division should concomitantly establish an enhanced minimum requirement for retail electricity suppliers to provide electricity from these “second-tier” sources in addition to the minimum requirement pertaining to new renewable generating sources under the statute. We believe the statute provides ample authority for the Division to establish such a second-tier of the RPS.

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<sup>1</sup> Under the statute, the only exception is for a biomass facility that *increases* its generating capacity after 1997, in which case the statute allows *only* the portion of the power that is greater than the unit’s historical generation rate to be considered as a “new renewable energy generating source.” M.G.L. c. 25A, s. 11F(a).

**There is insufficient evidence to justify removal of the categorical exclusion of pile-burn and stoker combustion technologies.**

The NOI also contemplates removing the categorical exclusion of pile-burn and stoker combustion technologies from the RPS regulations. We do not believe that such a change is warranted, absent substantial new evidence that these technologies have evolved dramatically.

Pile-burn and stoker combustion technologies were explicitly excluded from RPS eligibility in the past because they are old, inefficient, polluting technologies. As we understand it, the only advancement in using these combustion technologies has been with respect to adding back-end emissions control devices. We are skeptical of recent claims that significant advancements have been made with respect to developing and deploying more efficient versions of these technologies. In the absence of evidence that these combustion technologies have truly changed and are deserving of classification as *advanced* power conversion technologies, there is no justification for removing this appropriate categorical exclusion.

**C&D wood should expressly be acknowledged as an eligible biomass fuel only if accompanied by stringent air emissions standards.**

Through a series of advisory rulings, the Division has allowed new biomass facilities with C&D waste as part of their fuel stream to be deemed RPS-eligible. As the NOI correctly points out, the Massachusetts Department of Environmental Protection has concerns regarding air emissions from burning C&D waste, which often contains heavy metals and other pollutants. We share these concerns, and thus would support the codification of the Division's prior advisory rulemaking to explicitly recognize C&D wood as an eligible biomass fuel only if accompanied by stringent air emissions standards that embrace the achievable emission limitations set forth in Table 3 of the Notice – e.g., 99.9% removal of every heavy metal other than mercury, (see p.12) – as well as constant emissions monitoring. We also believe that the same stringent emissions control (i.e., 99.9% removal) should be set for mercury in addition to the other listed heavy metals, with the understanding that facilities presumably would need to meet this standard by ensuring that mercury-laden C&D waste is not included in any eligible biomass facility's fuel stream unless and until more effective mercury emissions control technology becomes available.

**“Low-emission” criteria should be established by regulation and ought to embrace the lowest achievable emissions rates.**

Given that the RPS is a significant part of the Commonwealth's plan to combat the significant threat of climate change by fostering the development of new clean renewable energy resources, we believe that it is critically important to ensure that eligible biomass facilities comport with the statute's low-emissions requirement by truly being clean – i.e., by meeting the best achievable emissions limitations (as set forth in Table 3 on p. 12 of the Notice). It should not be forgotten that the mix of new renewable facilities under the RPS includes significant non-emitting sources such as wind and solar power. Of course, biomass facilities, by contrast, are expected to generate *some* air emissions – but they must not be considered RPS-eligible if they are a significant part of the greenhouse gas emissions problem that the RPS is intended to address.

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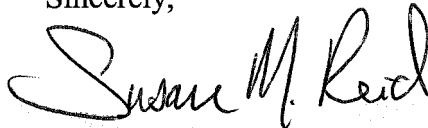
We therefore urge the Division to adopt specific low-emission criteria that embrace the achievable emission limitations set forth in Table 3 (which notably are significantly lower than the currently permitted emission limitations as set forth in Table 2). Given that the achievable emission limitation for mercury as identified in Table 3 is only 85% removal, we believe that the Division should set a standard for mercury that matches the limit for other heavy metals (i.e., 99.9% removal) and that facilities meet this standard by eliminating mercury content from their fuel stream unless and until a more effective mercury emission control technology is available.

**We support the Division's effort to explicitly define "advanced biomass power conversion technologies," but remain concerned that "Net Heat Rate" may not be an appropriate metric.**

We share the Division's concern that the current system of case-by-case evaluation of biomass power conversion technologies is burdensome and inefficient, and agree that a clearly articulated, appropriate standard would be beneficial and would improve fairness and predictability. However, we are concerned that a standard defined by "net heat rate" could easily lend itself to abuse, given that there are many ways to "play with the numbers" to suggest a much lower (and better) net heat rate than the reality. One potential alternative would be delineate acceptable power conversion technologies with associated explicit limits on the lower threshold for net heat rate that each facility must achieve in order to qualify as an advanced biomass power conversion technology.

Thank you for the opportunity to provide these comments. We look forward to continuing our participation in this important dialogue.

Sincerely,

A handwritten signature in black ink that reads "Susan M. Reid". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

Susan M. Reid, Esq.  
Staff Attorney